

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KEVIN PATRICK SMITH,

Defendant.

CR 23-15-M-DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto's Findings & Recommendation Concerning Plea. (Doc. 28.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Kevin Patrick Smith is charged with two counts of threats to injure and murder a United States Senator, in violation of 18 U.S.C. § 115(a)(1)(B) and 18 U.S.C. § 115(b)(4) (Counts I and II). (Doc. 6.) Judge DeSoto recommends that

this Court accept Mr. Smith's guilty plea as to Count I after he appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 28) is ADOPTED in full.

IT IS FURTHER ORDERED that Mr. Smith's motion to change plea (Doc. 21) is GRANTED.

IT IS FURTHER ORDERED that Kevin Patrick Smith is adjudged guilty as charged in Count I of the Indictment.

DATED this 10th day of May, 2023.



Dana L. Christensen
District Judge
United States District Court